

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: SORIN 3T HEATER-COOLER SYSTEM
PRODUCTS LIABILITY LITIGATION (NO. II)**

MDL No. 2816

TRANSFER ORDER

Before the Panel: Plaintiffs in the action listed on Schedule A (*Yerkey*) move under Panel Rule 7.1 to vacate our order that conditionally transferred their action to MDL No. 2816. Defendants Sorin Group Deutschland GmbH (n/k/a LivaNova Deutschland GmbH) and Sorin Group USA, Inc. (n/k/a LivaNova USA, Inc.) (together, LivaNova) as well as defendants The Cleveland Clinic Foundation, Cleveland Clinic, and Cleveland Clinic-Main Campus oppose the motion to vacate.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2816, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. No party disputes that, like many of the already-centralized actions, *Yerkey* involves factual questions arising out of allegations that LivaNova's Sorin 3T heater-cooler system contains defects that leave the device susceptible to bacterial colonization, resulting in some patients' exposure to nontuberculous mycobacterium (NTM) during surgery. *See In re Sorin 3T Heater-Cooler System Products Liability Litigation (No. II)*, 289 F. Supp. 3d 1335 (J.P.M.L. 2018). Plaintiffs' claims in *Yerkey*, like those of plaintiffs in the MDL, center on the allegation that plaintiff Mr. Yerkey developed an NTM infection after the use of a Sorin 3T heater-cooler unit during surgery. *Yerkey* thus shares questions of fact with the actions already in the MDL. Indeed, it previously was pending in the transferee court before it was remanded to state court and then removed a second time.

Plaintiffs do not dispute that their action and the actions in MDL No. 2816 share common factual questions. Instead, in support of their motion to vacate, plaintiffs argue that the Panel should allow the Northern District of Ohio to rule on their pending motion for remand to state court. We are not persuaded by this argument. The Panel has held that such jurisdictional objections generally do not present an impediment to transfer.¹ *See, e.g., In re Prudential Ins. Co.*

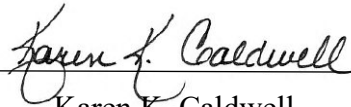
¹ Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so. We, therefore,

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of Am. Sales Practices Litig., 170 F. Supp. 2d 1346, 1347–48 (J.P.M.L. 2001) (“[R]emand motions can be presented to and decided by the transferee judge.”). “This is so even where, as here, plaintiffs assert that the removals were patently improper.” *In re Ford Motor Co. DPS6 PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018).

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Middle District of Pennsylvania and, with the consent of that court, assigned to the Honorable Christopher C. Conner for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

decline to delay our decision to give the transferor court further time to rule on the pending remand motions, as requested by plaintiffs in the alternative.

**IN RE: SORIN 3T HEATER-COOLER SYSTEM
PRODUCTS LIABILITY LITIGATION (NO. II)**

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SCHEDULE A

Northern District of Ohio

YERKEY, ET AL. v. SORIN GROUP DEUTSCHLAND GMBH, ET AL.,
C.A. No. 1:23-00532